IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4320 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJKUMAR WD/O.KISHANCHAND ROCHIRAM KHANCHANDANI - Petitioner(s)
Versus
DY.FOOD & CIVIL SUPPLIES CONTROLLER & 1 - Respondent(s)

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Appearance :
MR NM KAPADIA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MS.MAITHILI D. MEHTA, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 29/06/2006

ORAL JUDGMENT

The present is the application filed by the widow of Shri Kishanchand Rochiram Khanchandani,

challenging the action of the authorities (respondent no.1) of rejecting the request of the petitioner to transfer the licence for sale of kerosene, which existed, in the name of her deceased husband, who died on 9th August 2004.

2. The learned advocate appearing for the petitioner submitted that the petitioner made an application on 24th January 2005, which is produced at Annexure 'D' to this petition. Respondent no.1 herein requested to transfer licence No.AR/ 252 which was in the name of her husband, who died of cancer on 9th August 2004. It was also mentioned in the application that she has three sons and one daughter, all of whom were supported by the income derived from the business carried under the said licence, that the petitioner has no income, earlier an application was made for transfer of licence in the name of her son, Pankaj, which was rejected, that the said application is wrongly rejected, that there is no rule under which a licence cannot be transferred for third time in the case of death of licenceholder, that the request is made for transfer of licence as the

applicant is the heir of the deceased, that the licence issued to her husband was a new licence and was independently given, therefore, there is no question of, 'any earlier transfer by heirship'.

It was also mentioned in the the application that, 'we are five persons living together and according to age-wise seniority the name of the applicant in the first in the heirs of the deceased, that if the licence cannot be transferred in the name of my son, Pankaj, then the same may be transferred in my name. The applicant is 52 year old, studied upto Old SSC and is able to maintain accounts and read and write. It is also mentioned that looking to my financial conditions, the request be granted, that my sons and daughters have no objection if the licence is transferred in my name. That the applicant has no source of livelihood and therefore, after transferring the name of the applicant, stock of kerosene be released. That the licence was otherwise valid upto 2006. That in support of the educational qualifications, certificate in the name of 'Sugniben Panjumal Lekhvani', the applicant which on getting

married was changed to the present one, i.e. 'Rajkumari Kishanbhai Khanchandani'.

This application was replied by the authorities by letter dated 2nd April 2005. The petitioner-applicant was informed that your request for getting the licence transferred as heir of the deceased cannot be considered by the Government, the application be 'filed'.

3. The applicant made yet another application addressing the same to the Hon'ble Minister on 25th April 2005. The contents of this application are more or less the same to that of the application dated 24th January 2005. This application was accompanied by certificates like 'death certificate' of the husband, certificate of ailment from the Civil Hospital, xerox copies of the kerosene licence, ration card, probate, and SSC certificate and a certificate to show that the name of the petitioner was 'Sugniben Panjumal Lekhvani'.

4. It is next submitted that the petitioner

received a letter dated 9th January 2006. This fact is stated in para 3AA which was inserted subsequently by way of draft amendment and letter dated 9th January 2006 was placed on record as Annexure 'I'. It is stated therein that by application dated 26th December 2005, a request was made to transfer the licence of the deceased-husband of the petitioner in the name of the petitioner.

This application dated 26th December 2005 is not referred to in the petition. When it is put to the learned advocate for the petitioner whether the petitioner had filed any such application, and if yes, why the same is not referred to in the petition. The learned advocate for the petitioner submitted that, 'he has prepared petition as per the instructions given by the petitioner and as he is not able to contact the petitioner at this point of time, he is not in a position to reply the query of the Court'. There is a wilful suppression of material facts.

It is mentioned in the communication that, 'erstwhile

licence was in the name of Shri 'Rochiram Narandas'. On his demise the licence was transferred to his wife 'Smt.Rukhiben Rochiram'. Thereafter, on her demise, the licence was transferred to her son, 'Kishanchand Rochiram' (husband of the petitioner). On demise of said 'Shri Kishanchand Rochiram', his son 'Pankaj Kishanchand' requested that the licence be transferred to his name. The said request was sent to the Government, which was not accepted by the Government, this was communicated to the party. It is thereafter that for the fourth time an application was made to transfer the licence in the name of the petitioner. It is mentioned in the communication that as this is the fourth request and the earlier request is not accepted for transfer of licence from the name of your husband to your son, the same cannot be transferred in your name also and repeated requests made either before the Government or in the office of the signatory are not acceptable. Lastly, it is stated that, 'this fact is already intimated to you by communication dated 16th November 2004 and 2nd April 2005'.

5. In the communication it is stated that according to the rules, the 'case of first transfer on the basis of heirship' is to be decided by the licensing authority-Food and Civil Supplies Controller, Ahmedabad City. The second request for transfer on heirship is to be sent to the Government, who may accept or not. For any subsequent request for transfer of licence on the basis of heirship, there is no Government Circular, therefore, such requests cannot be accepted. It is also stated in the communication that, 'no new retail licence for kerosene is granted by the Government'. As per the rules only those persons who are awarded a fair price shop (Deen Dayal Bhandar) are granted licence for kerosene. The communication further states that as and when the Government advertises in local daily newspapers for opening of fair price shop, the applicant can apply for the same. The communication ends with a note that in case the applicant is willing to examine the original papers, he can do so at the office of the signatory.

6. This communication is dated 9th January 2006. It

is the case of the petitioner that this communication was not with the petitioner when the petition was prepared. The petition was though affirmed on 26th December 2005, it was filed on 13th January 2006 only. The learned advocate for the petitioner submitted that therefore, the communication is not referred to in the petition. The same is placed on the record by filing a draft amendment.

7. This explanation can at the best be accepted so far as 'non production of communication dated 9th January 2006 is concerned. But then what about the facts narrated in the communication, the same were within the knowledge of the petitioner and those facts are material facts and those facts are suppressed for the reasons best known to the petitioner. Only on this short ground the petition deserves to be dismissed with heavy cost, as it is a case of an attempt to obtain a favourable order by invoking sympathy of the Court by suppressing material fact.

8. Mr.Kapadia, the learned advocate submitted that

there is no question of suppression of any fact, because in the first application itself, i.e. 24th January 2005 (Annexure 'C' to this petition), the petitioner had mentioned that, 'there are no rules, whereby the third transfer on the basis of the heirship can be denied'. The learned advocate is over-simplifying the matter. He is avoiding to face the serious matter of **suppression**. Important material fact that earlier the licence was in the name of the father in law of the present petitioner. On demise of father in law, the licence was transferred in the name of mother in law. It was on the demise of mother in law that the licence was transferred in the name of the husband of the petitioner. These important material facts having direct bearing on the question involved in the petition are suppressed. Not only that even after the petitioner is caught the 'situation' is tried to be explained and an attempt is made to brush aside such serious issue.

9. The petitioner has then sent a letter to the authority through advocate. The language is shocking. It is almost in a threatening tone,

although the sentences are prefixed by the word like 'kindly'. Para 1 reads as under:

> “Kindly note that my client received your reply. **The contents thereof are not accepted**. Kindly give details as to in the case of which licenceholder, the licence is transferred in the name of legal heir for the second time and third time in the city of Ahmedabad as well as any other region of the Gujarat State. Kindly also give positive statement, that no such licence is transferred in the name of the heirs for the second time and third time in case any of the licenceholder within the State of Gujarat, if any.
>
> In spite of repeated requests you have not supplied a copy of order passed by the State of Gujarat. You are requested to supply the same.
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> It is stated in your letter that it is only

when fair price shop licence is given by the Government, licence for selling kerosene is granted. Kindly send to my client necessary rules and regulations in this respect inasmuch as according to my client no such rule exists.

Kindly note that a false statement is made that it is only when fair price shop is granted licence, licence for kerosene is given, the same is not applicable in case of change of land and legal heir policy is made applicable to several licenceholders who were holding licence for selling kerosene only and were not holding licence for fair price shop. You may verify your record and supply details as to in how many cases you have changed the name of licenceholder (in the name of legal heir). If those details are not supplied, my client will presume that you want to suppress details and do not want to supply those details."

10. The letter reflects the mind frame of the petitioner. An undue pressure is sought to be created on the authority dealing with the application of the petitioner.

This letter is replied by the authority by communication dated 14/15th February 2006. The letter is addressed to the learned advocate. The letter reiterates what is stated in communication dated 9th January 2006, namely, in case of death of licenceholder, in the event of first occasion, the power is with the signatory to transfer the licence in the name of the heir of the deceased. It is further stated that in the event of second such occasion, on the death of the licenceholder the request is to be forwarded to the Government and the Deputy Secretary, Food & Civil Supplies Department is to consider the request for grant of the same. It is also mentioned that a copy of the order of the Government by which the request made by the son of the petitioner was not accepted by the Government is enclosed.

11. The learned advocate for the petitioner strenuously submitted that the action of the authorities is unjust arbitrary, capricious, illegal inasmuch as the action is not in accordance with law. He submitted that there are various circulars. Some of them are produced along with this petition. One such circular is produced at Annexure 'F'. It is dated 31st July 1996. Another circular is produced at Annexure 'G' dated 11th February 2004. Yet another circular is produced at Anenxure 'G' (Colly.) dated 2nd November 2004. He submitted that taking all these circulars together, there is no prohibition prescribed for transfer of licence for the third time.

12. The submission is devoid of any merits. The present petition is filed under Articles 226 & 227 of the Constitution of India read with the Essential Commodities Act. It is for the petitioner to point out 'the right', violation of thereof, the duty cast on Sate, non-discharge of the same. Present is the case falling in the ambit of '**policy matters**'.

Transfer of a licence in favour of a heir on sad demise of the licenceholder is a matter of 'policy' of the Government, which is framed by the Government keeping in mind various relevant factors necessary for implementing the directive principles.

The learned advocate for the petitioner submitted that this, 'transfer of licence' or 'change of name in the licence' can be compared with the policy of the Government of 'compassionate appointment'. The learned advocate submitted that once there is no prohibition in express terms on transfer of licence for the third time in the name of heir of the deceased licenceholder, the Government cannot deny such transfer.

The submission made by the learned advocate is not only misconceived but is also misplaced. The right, if any, is conferred on the petitioner, it is only from the policy, laid down by the circulars. If that policy does not specifically provide for transfer for third time, there is no right created in favour of the petitioner and therefore, the petitioner cannot

get it enforced by approaching the court of law much less this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India.

13. The learned advocate for the petitioner, possibly out of frustration as he wanted the licence to be transferred in the name of the petitioner, submitted that the licence held by the husband of the petitioner was a fresh licence and therefore, the request of the petitioner for transfer is not the second or third in succession. The learned advocate invited attention of the Court to Annexure 'A' of the petition where xerox copy of the licence is produced. The learned advocate submitted that the licence is in the name of the husband of the petitioner as can be seen from Part-1, internal page 2 of the licence. He then invited attention to Part-II, internal page 11 of the licence and then submitted that though there is some endorsement made adjacent to the photograph of the husband of the petitioner, the said endorsement is only to the effect that the present licence is given after cancelling the earlier licence and therefore, for all

practical purposes this licence is to be considered to be a fresh licence issued in the name of the husband of the petitioner.

14. The submission as stated hereinabove is made out of frustration and helplessness as the only object which is in the mind of the petitioner is to get the licence transferred in her name. When a new licence is issued to the heir of the deceased licenceholder, it is only after cancelling the earlier licence. The reason for which the licence was issued in the name of the husband of the petitioner was 'sad demise of the earlier licenceholder, i.e mother of the husband of the petitioner'. This submission has no merits and hence rejected.

15. The learned advocate for the petitioner submitted that the case of the petitioner is required to be considered on compassionate grounds. He submitted that in the application dated 24th January 2005 (Annexure 'D') it is mentioned that the petitioner along with his three sons and a daughter,

totalling to five, was residing with her husband. That the petitioner does not have any source of livelihood. That after taking into consideration the financial condition of the petitioner and the heirship, licence be transferred in the name of the petitioner.

These factors are required to be considered by the authorities and are in fact considered by the authorities including the Government. One cannot lose sight of the fact that such factors are common almost in all the cases of sad demise of the licenceholder, the Government framed a policy of transferring the licence on **two** occasions in the name of the heir of the licenceholder. But then there has to be an end. Licence cannot be the matter of 'perpetual grant'. On the other hand there is an arguable point against this policy of the Government. Because, this policy deprives the world at large, the eligible candidates, who can apply for the licence. As that is not the question posed before this Court at this stage, the Court does not answer the same. But at the same time the Court is bound by law to take note of the fact

that, 'the policy of the Government confers right on the heirs of the licenceholder, only for two transfers and not beyond that. That being the position, under the law the petitioner cannot seek third transfer. In the opinion of this Court it is rightly rejected by the authorities.

16. The learned advocate for the petitioner next submitted that the petitioner is not supplied with the copy of the order, whereby the application of the petitioner was rejected by the Government. The application made by the son of the petitioner for transfer of licence was the request, for the third consecutive transfer, the request was sent to the Government and the same was rejected by communication dated 11th October 2004, a copy of which is supplied to the learned advocate in response to notice dated 1st February 2006 with letter dated 14/15th February 2006.

So far as the request made by the petitioner is concerned, it is specifically mentioned that the request of the petitioner is the fourth request and

as the request of the son of the petitioner is already rejected by the Government, the application made by the petitioner is not acceptable in the Government and in office (office of the Deputy Food & Civil Supplies Controller, Ahmedabad City).

In view of the aforesaid discussion no substance is found in this petition and the same is dismissed. Notice is discharged.

17. For the suppression of material fact, which is discussed hereinabove, the petition is dismissed with cost of Rs.7,500/- (Rupees seven thousand and five hundred only).

18. At this juncture, the learned advocate Mr.Kapadia reiterated his submissions that this is not a case of suppression inasmuch as it was the petitioner who placed the communication dated 9th January 2006 on record by way of amendment. The fact of licence originally being in the name of Shri Rochiram Narandas and its transfer in the name of the husband of the petitioner, on sad demise of Rukhiben,

came to the knowledge of the petitioner only when she received communication dated 9th January 2006 cannot be believed. These facts can safely be presumed to be in the knowledge of the petitioner right from day one. Therefore, all these facts should have been in the petition independent of communication dated 9th January 2006. It is easy to understand that the petitioner under compulsion placed communication dated 9th January 2006 on record and once that communication was placed, para 3AA was mere a consequence. There is no voluntary disclosure of these important material facts by the petitioner. To that extent it is nothing but a wilful suppression on the part of the petitioner with a view to invoke sympathy of the Court and to obtain favourable order. If the petitioner would have come to this Court disclosing that the licence which was held by her father in law, which was transferred in the name of the mother in law which was then transferred in the name of her husband is now sought to be transferred in the name of the petitioner, it would not have invoked any sympathy. As against that when it is stated that, the poor widow is here before this Court

praying that the licence which was held by her husband may now be transferred in the name of the petitioner-widow lady. In view of that it is reiterated that this is a case of suppression of fact. Not only suppression of fact but suppression of material fact with an intention to obtain favourable order from this Court. This Court restrains from issuing notice for 'contempt' only because it is a case of a widow lady.

(RAVI R. TRIPATHI, J.)

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